

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOUGLAS A. VANDENBURGH,
individually and as trustee for
PACTRAC (FAMILY TRUST),
PATRICIA VANDENBURGH, and
THE ARCHTRUSTEE OF THE
SANTIAGO SEAFARERS
SOCIETY,

Defendants.

NO. CV-03-5117-RHW

**ORDER GRANTING UNITED
STATES' MOTION FOR ENTRY OF
ORDER OF FORECLOSURE AND
JUDICIAL SALE**

Before the Court is the United States' Motion for Entry of Order of Foreclosure and Judicial Sale (Ct. Rec. 77). The motion was heard without oral argument. Defendants did not file any opposition to the motion.

On September 28, 2005, the Court entered an Order for Judgment against Douglas A. VanDenburgh and Patricia VanDenburgh in favor of the United States (Ct. Recs. 63, 64, and 65). It was ordered that Douglas A. VanDenburgh and Patricia VanDenburgh are indebted to the United States for the unpaid assessed balances on individual federal income taxes and accrued interest and penalties for tax years 1987 through 1994 in the amount of \$213,915.67 and \$71,311.14 respectively, as of July 31, 2005, plus interest pursuant to 26 U.S.C. § 6601, 6621, and 6622, and 28 U.S.C. § 1961(c) and other accruals as allowed by law until paid in full.

It was further ordered that the United States has valid federal tax liens on a

1 property located at 731 North 6th Street, Walla Walla, Washington, 99362 (“the subject
2 property”), and that the federal tax liens on the subject property can be enforced and the
3 property sold pursuant to 28 U.S.C. § 2001.

4 The Court finds that good cause exists to grant the motion. *See United States v.*
5 *Rodgers*, 461 U.S. 677, 709 (1983) (We can think of virtually no circumstances, for
6 example, in which it would be permissible to refuse to authorize a sale simply to protect
7 the interests of the delinquent taxpayer himself or herself.”).

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. The United States’ Motion for Entry of Order of Foreclosure and Judicial Sale
10 (Ct. Rec. 77) is **GRANTED**.

11 2. The United States’ federal tax liens shall be **FORECLOSED** on the real
12 property located at 731 North 6th Street, Walla Walla, Washington, 99362 and legally
13 described as follows:

14 Lot 7 and the north 41.5 feet of Lot 6 in Block 15 of Langford's Addition to
15 the City of Walla Walla, according to the official plat thereof of record in
16 the office of the Auditor of Walla Walla County, State of Washington,
17 (Walla Walla County Parcel No. 36-07-19-59-1506).

18 3. The **JUDICIAL SALE** of the subject property shall be conducted as follows:

19 1. The United States Marshal for the Eastern District of Washington, his or
20 her representative, or an Internal Revenue Service Property Appraisal and
21 Liquidation Specialist (“PALS”), is hereby authorized and directed under 26
22 U.S.C. § 7403 and 28 U.S.C. § 2001, et seq. to offer for public sale and to sell the
23 subject property. The United States may choose either the United States Marshal
24 or a PALS to carry out the sale pursuant to this Court's Order.

25 2. The Marshal, his or her representative, or a PALS is hereby authorized
26 to have free access to the subject property and to take all actions necessary to
27 preserve said property, including, but not limited to, retaining a locksmith or other
28 person to change or install locks or other security devices on any part of the

1 property, until the deed to the subject property is delivered to the ultimate
2 purchaser.

3 3. The terms and conditions of the judicial sale shall be as follows:

4 A. The sale of the subject property shall be free and clear of the interest
5 of Douglas A. VanDenburgh and Patricia VanDenburgh;

6 B. The sale shall be subject to building lines, if established, all laws,
7 ordinances, and governmental regulations (including building and zoning
8 ordinances) affecting the subject property, and easements and restrictions of
9 record, if any;

10 C. The sale shall be held at the courthouse of the county or city in which
11 the subject property is located, on the subject property's premises, or at any
12 other place in accordance with the provisions of 28 U.S.C. §§ 2001 and
13 2002;

14 D. The date and time for sale shall be announced by the United States
15 Marshal, his or her representative, or a PALS;

16 E. Notice of the sale shall be published once a week for at least four
17 consecutive weeks before the sale in at least one newspaper regularly issued
18 and of general circulation in Walla Walla, Washington, and, at the
19 discretion of the Marshal, his or her representative, or a PALS, by any other
20 notice deemed appropriate. The notice shall contain a description of the
21 subject property and the terms and conditions of sale as set forth in this
22 Court's Order;

23 F. The minimum bid shall be set by the Internal Revenue Service. If the
24 minimum bid is not met or exceeded, the Marshal, his or her representative,
25 or a PALS may, without further permission of this Court, and under the
26 terms and conditions as set forth in this Court's Order, may hold a new
27 public sale, if necessary, and reduce the minimum bid or sell to the second
28 highest bidder;

1 G. The successful bidder(s) shall be required to deposit at the time of the
2 same with the Marshal, his or her representative, or a PALS a minimum of
3 ten percent (10%) of the bid, with the deposit to be made by certified or
4 cashier's check or cash payable to the United States District Court for the
5 Eastern District of Washington. Before being permitted to bid at the sale,
6 bidders shall be required to display to the Marshal, his or her representative,
7 or a PALS proof that they are able to comply with this requirement. No
8 bids shall be received from any person(s) who has not presented proof that,
9 if they are the successful bidders(s), they can make the deposit required by
10 this Court's Order;

11 H. The balance of the purchase price for the Subject property shall be
12 paid to the United States Marshall, his or her representative, or a PALS
13 within twenty (20) days after the date the bid is accepted, by a certified or
14 cashier's check, payable to the United States District Court for the Eastern
15 District of Washington. If the bidder fails to fulfill this requirement, the
16 deposit shall be forfeited and shall be applied to cover the expenses of the
17 sale, including commissions due under 28 U.S.C. § 1921(c), with any
18 amount remaining to be applied to the income tax liabilities of defendants
19 Douglas A. VanDenburgh and Patricia VanDenburgh at issue herein. The
20 subject property shall be again offered for sale under the terms and
21 conditions of this Court's Order. The United States may bid as a credit
22 against its judgment without tender of cash;

23 I. The sale of the subject property shall be subject to confirmation by
24 the Court. The United States shall file a Report of Sale with the Court,
25 together with a proposed Order of Confirmation of Sale and Distribution of
26 Sales Proceeds, along with a proposed Deed, within twenty (20) days from
27 the date of receipt of the balance of the purchase price;

28 J. On confirmation of the sale, the Marshal, his or her representative, or

1 PALS shall execute and deliver a Deed of Judicial Sale conveying the
2 subject property to the purchaser;

3 K. On confirmation of the sale, all interests in, liens against, or claims
4 to, the subject property that are held or asserted by all parties to this action
5 shall be discharged and extinguished;

6 L. On confirmation of the sale, the Recorder of Deeds for Walla Walla
7 County, Washington shall cause transfer of the subject property to be
8 reflected upon that County's register of title; and

9 M. The sale shall be ordered pursuant to 28 U.S.C. §2001, and shall be
10 made without right of redemption.

11 4. Until the subject property is sold, defendants Douglas A. VanDenburgh
12 and Patricia VanDenburgh, along with any party that may claim possession of the
13 Subject property, shall take all reasonable steps necessary to preserve the property
14 (including all buildings, improvements, fixtures and appurtenances on the
15 property) in its current condition including, without limitation, exhausting
16 reasonable steps to procure and maintain a fire and casualty insurance policy on
17 the property. They shall neither commit waste against the subject property nor
18 cause or permit anyone else to do so. They shall neither do anything that tends to
19 reduce the value or marketability of the subject property nor cause or permit
20 anyone else to do so. The defendants shall not record any instruments, publish
21 any notice, or take any other action (such as running newspaper advertisements or
22 posting signs) that may directly or indirectly tend to adversely affect the value of
23 the subject property or that may tend to deter or discourage potential bidders from
24 participating in the public auction, nor shall they cause or permit anyone else to do
25 so.

26 5. All persons occupying the subject property shall leave and vacate the
27 property permanently within thirty (30) days from the date of entry of this Order
28 of Foreclosure and Judicial Sale, each taking with them his or her personal

1 property (but leaving all improvements, buildings, fixtures, and appurtenances to
2 the property). If any person fails or refuses to leave and vacate the property by the
3 time specified in this Order, the United States Marshal's Office, alone, shall be
4 authorized to take whatever action it deems appropriate to remove such person
5 from the premises, whether or not the sale of such property is being conducted by
6 a PALS. If any person fails or refuses to remove his or her personal property from
7 the subject property by the time specified herein, the personal property remaining
8 on the property thereafter shall be deemed forfeited and abandoned, and the
9 United States Marshal's Office shall be authorized to remove it and to dispose of it
10 in any manner it deems appropriate, including sale, in which case the proceeds of
11 the sale shall be applied first to the expenses of sale, with the balance to be paid
12 into the Court for further distribution.

13 6. The proceeds arising from the sale of the subject property shall be paid
14 to the Clerk of this Court and applied as far as they are sufficient, according to the
15 terms of this Court's Order of Distribution of Sales Proceeds, which shall be
16 determined at the time of sale confirmation.

17 **IT IS SO ORDERED.** The District Court Executive is hereby directed to enter
18 this order, and to furnish copies to counsel and *pro se* Defendants.

19 **DATED** this 8th day of July, 2009.

20 *S/ Robert H. Whaley*

21 ROBERT H. WHALEY
22 Chief United States District Judge

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